

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation .
Against:

GEOFFREY LOUIS PHELAN, M.D.

Case No. 800-2015-013660

**Physician's and Surgeon's
Certificate No. C 36207**

Respondent

DECISION

**The attached Stipulated Surrender of License and Order is hereby
adopted as the Decision and Order of the Medical Board of California,
Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on August 2, 2018

IT IS SO ORDERED July 26, 2018.

MEDICAL BOARD OF CALIFORNIA

By: 

**KIMBERLY KIRCHMEYER
EXECUTIVE DIRECTOR**

1 XAVIER BECERRA
Attorney General of California
2 MATTHEW M. DAVIS
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

8
9 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2015-013660

13 **GEOFFREY LOUIS PHELAN, M.D.**
14 **1119 S Mission Rd. #122**
Fallbrook, CA 92028-3225

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Physician's and Surgeon's Certificate No. C**
16 **36207**

17 Respondent.

18
19
20 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
21 entitled proceedings that the following matters are true:

22 **PARTIES**

23 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
24 of California (Board). She brought this action solely in her official capacity and is represented in
25 this matter by Xavier Becerra, Attorney General of the State of California, by Demond L. Philson,
26 Deputy Attorney General.

27 2. Geoffrey Louis Phelan, M.D. (Respondent) is represented in this proceeding by
28 attorney Matthew D. Phelan, whose address is 271 Avery Ct., New Castle, CO, 81647.

1 3. On or about November 25, 1974, the Board issued Physician's and Surgeon's
2 Certificate No. C 36207 to Respondent. The Physician's and Surgeon's Certificate was in full
3 force and effect at all times relevant to the charges brought in Accusation No. 800-2015-013660.
4 Respondent's Physician's and Surgeon's Certificate expired on May 31, 2018, and has not been
5 renewed.

6 **JURISDICTION**

7 4. Accusation No. 800-2015-013660 was filed before the Board, and is currently
8 pending against Respondent. The Accusation and all other statutorily required documents were
9 properly served on Respondent on April 18, 2018. Respondent timely filed his Notice of Defense
10 contesting the Accusation. A copy of Accusation No. 800-2015-013660 is attached as Exhibit A
11 and incorporated by reference.

12 **ADVISEMENT AND WAIVERS**

13 5. Respondent has carefully read, fully discussed with counsel, and understands the
14 charges and allegations in Accusation No. 800-2015-013660. Respondent also has carefully read,
15 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
16 and Order.

17 6. Respondent is fully aware of his legal rights in this matter, including the right to a
18 hearing on the charges and allegations in the Accusation; the right to confront and cross-examine
19 the witnesses against him; the right to present evidence and to testify on his own behalf; the right
20 to the issuance of subpoenas to compel the attendance of witnesses and the production of
21 documents; the right to reconsideration and court review of an adverse decision; and all other
22 rights accorded by the California Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 **CULPABILITY**

26 8. Respondent understands that the charges and allegations in Accusation No. 800-2015-
27 013660, if proven at a hearing, constitute cause for imposing discipline upon his Physician's and
28 Surgeon's Certificate.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

11. Business and Professions Code section 2224, subdivision (b), provides, in pertinent part, that the Medical Board “shall delegate to its executive director the authority to adopt a . . . stipulation for surrender of a license.”

12. This Stipulated Surrender of License and Disciplinary Order shall be subject to approval of the Executive Director on behalf of the Medical Board. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Executive Director for her consideration in the above-entitled matter and, further, that the Executive Director shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it. By signing this stipulation, respondent fully understands and agrees that he may not withdraw his agreement or seek to rescind this stipulation prior to the time the Executive Director, on behalf of the Medical Board, considers and acts upon it.

13. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Executive Director on behalf of the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether or not to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Executive Director and/or the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the

1 Executive Director, the Board, any member thereof, and/or any other person from future
2 participation in this or any other matter affecting or involving respondent. In the event that the
3 Executive Director on behalf of the Board does not, in her discretion, approve and adopt this
4 Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it
5 shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied
6 upon or introduced in any disciplinary action by either party hereto. Respondent further agrees
7 that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason
8 by the Executive Director on behalf of the Board, respondent will assert no claim that the
9 Executive Director, the Board, or any member thereof, was prejudiced by its/his/her review,
10 discussion and/or consideration of this Stipulated Surrender of License and Disciplinary Order or
11 of any matter or matters related hereto.

12 14. The parties understand and agree that Portable Document Format (PDF) and facsimile
13 copies of this Stipulated Surrender of License and Order, including Portable Document Format
14 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

15 15. In consideration of the foregoing admissions and stipulations, the parties agree that
16 the Board may, without further notice or formal proceeding, issue and enter the following Order:

17 **ORDER**

18 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. C 36207, issued
19 to Respondent Geoffrey Louis Phelan, M.D., is surrendered and accepted by the Medical Board
20 of California.

21 1. The surrender of Respondent's Physician's and Surgeon's Certificate and the
22 acceptance of the surrendered license by the Board shall constitute the imposition of discipline
23 against Respondent. This stipulation constitutes a record of the discipline and shall become a part
24 of Respondent's license history with the Medical Board of California.

25 2. Respondent shall lose all rights and privileges as a Physician and Surgeon in
26 California as of the effective date of the Board's Decision and Order.

27 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
28 issued, his wall certificate on or before the effective date of the Decision and Order.

1 4. If Respondent ever files an application for licensure or a petition for reinstatement in
2 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
3 comply with all the laws, regulations and procedures for reinstatement of a revoked or
4 surrendered license in effect at the time the petition is filed, and all of the charges and allegations
5 contained in Accusation No. 800-2015-013660 shall be deemed to be true, correct and admitted
6 by Respondent when the Board determines whether to grant or deny the petition.

7 5. If Respondent should ever apply or reapply for a new license or certification, or
8 petition for reinstatement of a license, by any other health care licensing agency in the State of
9 California, all of the charges and allegations contained in Accusation, No. 800-2015-013660 shall
10 be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
11 Issues or any other proceeding seeking to deny or restrict licensure.

12
13 ACCEPTANCE

14 I have carefully read the above Stipulated Surrender of License and Order and have fully
15 discussed it with my attorney, Matthew D. Phelan. I understand the stipulation and the effect it
16 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of
17 License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the
18 Decision and Order of the Medical Board of California.

19
20 DATED: 6/26/15

Geoffrey L. Phelan
21 GEOFFREY LOUIS PHELAN, M.D.
22 Respondent

23 I have read and fully discussed with Respondent Geoffrey Louis Phelan, M.D. the terms
24 and conditions and other matters contained in this Stipulated Surrender of License and Order. I
25 approve its form and content.

26 DATED: _____

MATTHEW D. PHELAN
27 Attorney for Respondent
28

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked or surrendered license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 800-2015-013660 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 800-2015-013660 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Matthew D. Phelan. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED:

GEOFFREY LOUIS PHELAN, M.D.
Respondent

I have read and fully discussed with Respondent Geoffrey Louis Phelan, M.D. the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 6/28/2018

MATTHEW D. PHELAN
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
for consideration by the Medical Board of California of the Department of Consumer Affairs.

Dated: 6/28/18

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
MATTHEW M. DAVIS
Supervising Deputy Attorney General



DEMOND L. PHILSON
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 800-2015-013660

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Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2015-013660

Geoffrey Louis Phelan, M.D.
1119 S Mission Rd. #122
Fallbrook, CA 92028-3225

ACCUSATION

Physician's and Surgeon's Certificate
No. C 36207,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about November 25, 1974, the Medical Board issued Physician's and Surgeon's Certificate Number C 36207 to Geoffrey Louis Phelan, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2018, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

1 “(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and
2 participate in an interview by the board. This subdivision shall only apply to a certificate holder
3 who is the subject of an investigation by the board.”

4 5. Section 2266 of the Code states: “The failure of a physician and surgeon to maintain
5 adequate and accurate records relating to the provision of services to their patients constitutes
6 unprofessional conduct.”

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Repeated Acts of Negligence)**

9 6. Respondent Geoffrey Louis Phelan, M.D. is subject to disciplinary action under
10 section 2234 subdivision (c) of the Code in that he committed repeated negligent acts in the care
11 and treatment of patients A and B¹. The circumstances are as follows:

12 **Patient A:**

13 7. On or about April 23, 2015, the Medical Board of California Central Complaint Unit
14 (CCU) received a complaint from patient A alleging that Best 420 Health and Wellness was
15 owned and operated by a non-physician. The complaint also alleged Respondent provided patient
16 A with a recommendation for medical marijuana using telemedicine without performing an
17 examination. Patient A alleged that Respondent provided a recommendation for medical
18 marijuana for ninety-nine (99) plants. Patient A also alleged Respondent interviewed him via
19 Skype and did not ask why he needed the recommendation for medicinal marijuana.

20 8. On or about April 10, 2015, Respondent saw patient A, from a remote location away
21 from the clinic via videoconferencing. Patient A was an elderly gentleman who complained of
22 arthritis in multiple parts of the body which appears to be the reason for the recommendation of
23 medical marijuana. Respondent saw patient A via telemedicine only, not having seen the patient
24 in person before, and issued him a recommendation for medical marijuana comprised of ninety-
25 nine (99) plants. In the medical records that document the patient’s visit with Respondent, there is
26 no documentation of a physical exam. Respondent did not perform an examination on patient A

27 ¹ The patients in the Accusation will be referred to as Patients A and B. The identity of the
28 patients will be disclosed through discovery.

1 and never physically went to the clinic where the evaluations of Patient A were being done.

2 Respondent did not request or review the patient's prior medical records. In Patient A's medical
3 chart, under "Medications" Respondent notes that Patient A was taking Ibuprofen 400mg but it
4 does not provide detailed information about how many pills per day patient A was taking.

5 9. In patient A's medical record, there was no documentation of other therapies
6 Respondent tried, previous medication trials, physical exam findings, review of diagnostic studies
7 indicating the severity of the arthritis, or other data that would support a recommendation for
8 medical marijuana. The medical records do not include any information regarding the type of
9 arthritis Patient A was diagnosed with.

10 10. In patient A's medical record, Respondent notes "evaluated by specialist" but does
11 not elaborate on what type of specialist, what types of diagnostics or imaging were performed, or
12 what type of work up was conducted by the specialist.

13 11. Respondent treated Patient A via telemedicine only, not having seen the patient in
14 person before, and issued him a recommendation for medical marijuana comprised of ninety-nine
15 (99) plants. Respondent did not perform a focused musculoskeletal physical examination related
16 to the arthritis. Respondent should have performed a focused musculoskeletal physical
17 examination in order to support his recommendation for medical marijuana.

18 12. Respondent committed acts of repeated negligence in his care and treatment of patient
19 A, which included, but are not limited to, the following:

20 (a) Respondent departed from the standard of care by failing to perform an
21 appropriate examination on the patient prior to issuing a recommendation for medical marijuana.;

22 (b) Respondent departed from the standard of care by failing to keep adequate
23 records that support the decision to recommend medical marijuana for this patient; and,

24 (c) Respondent departed from the standard of care by failing to adequately review
25 the prior medical treatment before making a recommendation for medical marijuana.

26 **Patient B:**

27 13. On or about May 26, 2016, the CCU received a complaint from patient B alleging
28 Respondent provided patient B with a recommendation for medical marijuana using telemedicine

1 without performing an examination on Patient B. On November 16, 2015, patient B received a
2 recommendation for medical marijuana from Respondent.

3 14. On or about November 16, 2015, Respondent saw patient B, from a remote location
4 away from the clinic via videoconferencing. Patient B complained of back pain which appears to
5 be the reason for the recommendation of medical marijuana. Respondent saw patient B via
6 telemedicine only, without having seen the patient in person before. Respondent issued Patient B
7 a recommendation for medical marijuana. In the medical records that document the patient's visit
8 with Respondent, there is no documentation of a physical exam. Respondent did not perform an
9 examination on patient B and never physically went to the clinic where the evaluations were being
10 done.

11 15. In patient B's medical record, there is no documentation of other therapies
12 Respondent tried, previous medication trials, or other data that would support a recommendation
13 for medical marijuana.

14 16. In patient B's medical record, there is no indication of a treatment plan with
15 objectives that would support a recommendation for medical marijuana.

16 17. Respondent committed acts of repeated negligence in his care and treatment of patient
17 B, which included, but are not limited to, the following:

18 (a) Respondent departed from the standard of care by failing to perform an
19 appropriate examination on the patient prior to issuing a recommendation for medical marijuana;
20 and,

21 (b) Respondent departed from the standard of care by failing to keep adequate
22 records that support the decision to recommend medical marijuana for this patient.

23 18. Respondent's conduct, as described above, constitutes repeated acts of negligence in
24 the practice of medicine in violation of section 2234(c) of the Code and thereby provides cause to
25 discipline Respondent's license.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Maintain Adequate and Accurate Records)**

3 19. Respondent Geoffrey Louis Phelan, M.D. is subject to disciplinary action under
4 section 2266 of the Code in that he failed to maintain adequate and accurate medical records in
5 the care and treatment of patients A and B. The circumstances are as follows:

6 20. Paragraphs 7 through 14 above, are repeated here as if fully set forth.

7 21. Respondent's inadequate and inaccurate medical record keeping in his care and
8 treatment of patients A and B, as described above, constitutes a violation of section 2266 of the
9 Code and thereby provides cause to discipline Respondent's license.

10 **DISCIPLINE CONSIDERATIONS**

11 22. To determine the degree of discipline, if any, to be imposed on Respondent,
12 Complainant alleges that on or about March 19, 1987, in a prior disciplinary action entitled In the
13 Matter of the Accusation Against Geoffrey Louis Phelan, M.D. before the Board of Medical
14 Quality Assurance, in Case Number D-3412. Respondent's license was revoked subject to a stay,
15 and was placed on probation for two (2) years with certain terms and conditions for engaging in
16 gross negligence and incompetence. That decision is now final and is incorporated by reference
17 as if fully set forth.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the Medical Board of California issue a decision:

21 1. Revoking or suspending Physician's and Surgeon's Certificate Number C 36207,
22 issued to Geoffrey Louis Phelan, M.D.;

23 2. Revoking, suspending or denying approval of Geoffrey Louis Phelan, M.D.'s
24 authority to supervise physician assistants and advanced practice nurses;

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1 3. Ordering Geoffrey Louis Phelan, M.D., if placed on probation, to pay the Board the
2 costs of probation monitoring; and

3 4. Taking such other and further action as deemed necessary and proper.

4
5 DATED: April 18, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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